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From:

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To:

Cc:

Subject: RE: Taxable Amended Returns

we should probably continue to follow our existing procedures, but not precisely for the reasons you state.

1. Correct

2. The Service can wait and probably should, but can assess immediately if it wants to since the restriction on assessment under section 6225 does not apply due to the operation of section 6222(c)(2). Once the FPAA proceeding becomes complete, however, that proceeding will control over section 6222. Consequently, we would have to conform any prior section 6222 assessments to the amount determined in the FPAA as issued (or as redetermined by a court pursuant to an FPAA petition). Since the eventual assessment is controlled by the FPAA proceedings, we should probably wait and make only one assessment to save resources.

3. If the amended return is accompanied by a payment, the issue is moot, since an assessment is only necessary in order to collect a deficiency. A "deficiency" does not include amounts paid (i.e., amounts "collected without assessment"). I.R.C. 6211(a)(1)(B). A "deficiency" also does not include amounts shown on the taxpayer's return. "Return" for this purpose includes an amended return, unless the amended return indicates that the amounts are disputed. Treas. Reg. 301.6211-1(a)(last sentence).

So If there is any possibility that the "payment" can be construed as merely a "deposit" rather than a payment, or if the amended return indicates that the additional amount is being disputed, then we cannot assess until the TEFRA proceeding is complete.

